

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEPHEN CHRISTIE,

Case No. 3:23-cv-00255-ART-CLB

Petitioner,

ORDER

v.

NETHANJAH BREITENBACH,¹

Respondents.

Pro se Petitioner Stephen Christie has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (ECF No. 1-1 (“Petition”).) The court directed Christie to pay his filing fee or file an *in forma pauperis* application. (ECF No. 5.) Christie timely complied. (ECF No. 6.) This matter comes before the court for initial review under the Rules Governing Section 2254 Cases (“Habeas Rules”). For the reasons discussed below, the court directs service of the Petition and sua sponte raises the issue of counsel.

I. BACKGROUND²

Christie challenges a conviction and sentence imposed by the Second Judicial District Court for Washoe County (“state court”). *State v. Stephen John Michael Christie*, Case No. CR16-0503. The state court entered a judgment of conviction on April 3, 2017, pursuant to a jury trial, of two counts of robbery, burglary, leaving the scene of an accident involving personal injury, possession of a stolen motor vehicle, two counts of burglary while in possession of a deadly

¹ Christie is currently housed at Northern Nevada Correctional Center. Nethanjah Breitenbach is the current warden for that facility. At the end of this order, this court directs the clerk to substitute Nethanjah Breitenbach as a respondent for Respondent Warden Tim Garrett. *See* Fed. R. Civ. P. 25(d).

² The court takes judicial notice of the online docket records of the Second Judicial District Court and Nevada appellate courts. These docket records may be accessed at <https://www.washoecourts.com/Query/DetailedCaseSearch> and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 weapon, eluding a police officer, possession of a firearm with the serial number
 2 altered, possession of tools commonly used for commission of burglary or larceny,
 3 and felon in possession of a firearm. Christie was sentenced to an aggregate of
 4 16 years 8 months to 52 years. Christie appealed, and on May 18, 2018, the
 5 Nevada Court of Appeals affirmed. *Stephen John Michael Christie v. The State of*
 6 *Nevada*, No. 72976. Remittitur issued on June 14, 2018.

7 Christie filed a state petition for writ of habeas corpus on June 12, 2019.
 8 On August 17, 2022, the state court dismissed Christie's state petition. Christie
 9 appealed, and the Nevada Court of Appeals affirmed on March 17, 2023. *Stephen*
 10 *John Michael Christie v. The State of Nevada*, No. 85266-COA. Remittitur issued
 11 on April 11, 2023.

12 Christie initiated this action on or about June 6, 2023. (ECF No. 1-1 at 1.)³

13 **II. DISCUSSION**

14 Habeas Rule 4 requires this court to examine the Petition and order a
 15 response unless it "plainly appears" that the Petition is not entitled to relief. *See*
 16 *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts
 17 to screen and dismiss petitions that are patently frivolous, vague, conclusory,
 18 palpably incredible, false, or plagued by procedural defects. *Boyd v. Thompson*,
 19 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*, 908 F.2d 490, 491
 20 (9th Cir. 1990) (collecting cases). A response is warranted in the instant case.

21 Further, it appears that counsel may be helpful in this case. The Criminal
 22 Justice Act authorizes the court to appoint counsel "when the interests of justice
 23 so require." 18 U.S.C. § 3006A(a)(2). Although this court finds that the
 24 appointment of counsel is in the interests of justice given the apparent
 25 complexities of this case and Christie's lengthy sentence, this court is cognizant

26 ³ Christie previously filed a Petition for Writ of Habeas Corpus under 28 U.S.C. §
 27 2254 in case number 3:22-cv-00484-ART-CLB, but it was dismissed without
 28 prejudice as unexhausted and premature because his state habeas appeal was
 still pending.

of the fact that Christie has not moved for the appointment of counsel. As such, this court gives Christie 30 days to file a motion for the appointment of counsel. If Christie does not file such a motion within 30 days, the court will not appoint counsel and will issue a scheduling order on the Petition.

III. CONCLUSION

It is therefore ordered that the clerk (1) change Christie's address to Northern Nevada Correctional Center,⁴ (2) file the Petition (ECF No. 1-1), (3) substitute Nethanjah Breitenbach as a respondent for Respondent Warden Tim Garrett, (4) add Aaron Ford, Attorney General of the State of Nevada, as counsel for respondents, (5) electronically serve respondents' counsel a copy of the Petition (ECF No. 1-1), and (6) electronically provide respondents' counsel a copy of this order and copies of all other items previously filed in this case by regenerating the Notices of Electronic Filing.

It is further ordered that respondents' counsel must enter a notice of appearance within 21 days of entry of this order, but no further response will be required until further order.

It is further ordered that Christie file a motion for the appointment of counsel within 30 days if he desires that counsel be appointed to represent him. If Christie does not file a motion for the appointment of counsel within 30 days, the court will not appoint counsel for Christie and will issue a scheduling order on the Petition.

DATED THIS 7th day of June 2023.



ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE

⁴ This Court has received returned mail noting that Christie is now housed at Northern Nevada Correctional Center. (See ECF Nos. 4, 7.)